IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

MFA.No. 427 of 2001()

OP(MV).861/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM DT.8.12.2000.
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APPELLANT: 3RD RESPONDENT

THE ORIENTAL INSURANCE CO.LTD.,
MUVATTUPUZHA, REP.BY ITS DEPUTY MANAGER,
REGIONAL OFFICER, ERNAKULAM NORTH,
KOCHI 18.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS: CLAIMANT/ RESPONDENTS/ RESPONDENT 1 & 2
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1. **LAKSHMI, AGED 71 YEARS, D/O . LATE CHAMI,**
   HOUSE NO.365, HARIJAN COLONY,
   KALLIPADAM SHORANUR, OTTAPALAM,
   PALAKKAD DISTRICT.

2. **M.H.SHAMEER, AGED 26 YEARS,**
   S/O. HUSSAIN, HOUSE NO.5/1152,
   POTTIKARAN PARAMBA,
   KOMBARA MUKKU, KOCHI 2.

3. **AMSAD K.A., AGE NOT KNOWN,**
   S/O. ADAMKUTTY, HOUSE NO.3/10/A
   NELLUKADAVU, KOCHI 1.

BY ADV. SRI.SANTHEEP ANKARATH - R1

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09 /07 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.F.A. NO.427/2001

ORDER ON CMP. NO.3805/2001 IN MFA. 427/2001

DISMISSED

09.07.2007

SD/- J.B.KOSHY, JUDGE
SD/- K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 427 of 2001

Dated this the 9th day of July, 2007

Judgment

Koshy, J.

Third respondent insurance company in O.P. (M.V.) No.861 of 1999 is the appellant herein. First respondent herein is the claimant and respondents 2 and 3 herein are respondents 1 and 2 respectively in the O.P. Claimant filed the petition alleging that she was injured in a motor accident occurred on 28.10.1998 at Kulapully. Her case is that while she was walking along the public road, a tempo van KL 8B/3870 driven by the second respondent herein knocked her down from behind. She alleged that the accident occurred due to the negligence of the second respondent herein. Appellant insurance company, though admitted the policy of insurance in respect of the vehicle KL 8B/3870, contended that the claimant was not injured in any motor accident and that she sustained injuries in a fall at home and, therefore, she is not entitled for compensation. It was submitted that though the alleged accident occurred on 28.10.1998 at 7.00 a.m., F.I.R. is seen lodged only on 12.1.1999 on

the basis of a private complaint filed before the Judicial Magistrate of the first class, Ottappalam on 6.1.1999. Evidence in this case consists of the oral evidence of PW1 and RW1 and documentary evidence of Exts.A1 to A8 and Exts.X1 and X2. The tribunal, on an appreciation of evidence, came to the conclusion that the claimant sustained injuries due to hit of tempo van driven by the second respondent herein. With regard to the quantum of compensation, the tribunal awarded Rs.18,650/- as general and special damages.

2. Appellant mainly relied on Ext.A5 wound certificate. Under item No.9 - History and alleged cause of injury, it is stated as follows:

> "History of fall at home which the patient changed to having met with road traffic accident somewhere near Press Quarters, Shornur, later."

It is the contention of the claimant that she was a poor illiterate 71 year old harijan woman working as a housemaid. She was hit by the vehicle and the vehicle driver took her to the hospital when she was suffering with pain due to fracture and the people who brought her to the hospital might have stated that fall from home to avoid a criminal case. It took some time to recover the

injuries. Thereafter, she filed Ext.A1 private complaint knowing that she was cheated on the basis of which Ext.A2 F.I.R. was registered on 12.1.1999. Copy of the scene mahazar is Ext.A3. Police conducted investigation and on the basis of the investigation, Ext.A4 charge sheet was laid down. Police found that the accident occurred due to the negligent driving of second respondent and he was charge-sheeted. Injuries sustained by the claimant are as follows:

> "1. 7 c.m. x 1 c.m. contused lacerated wound on the left side of forehead extending to the root of nose forehead;
>
> 2. 12 x 1 c.m. contusion lacerated wound on the medial and plantar aspect of right foot;
>
> 3. 1 x 1 c.m. lacerated wound on the anterior aspect of left side chin; and
>
> 4. Tenderness over all the lower right side rib."

CT scan revealed fracture to nasal bone apart from facial injuries stated in Ext.A5 wound certificate. Ext.A6 is the discharge summary issued from Sanjeevani Hospital relating to the treatment of the claimant. The injuries confirmed were fracture nasal bone and fracture middle phalanx of right second toe. She remained hospitalised

from 28.10.98 to 31.10.98 for a period of about four days. Ext.A7 is the scan report which confirmed fracture nasal bone. Tribunal considered the injuries and considering the medical bills, total amount awarded was Rs.18,615/-.

3. PW1 who is an eye witness to the incident clearly stated that the offending vehicle hit at the claimant. Tribunal considered these aspects with respect to the injuries and found as follows:

> "16. The contention of learned counsel for respondents that since Ext.X2 case record and Ext.A5 wound certificate refer to cause of alleged injury as fall at home, the claim cannot sustain, cannot be accepted. The nature of injuries sustained to petitioner are well stated in Exts. X1 and X2. Such an injury cannot be caused by a free fall at home. Injury No.2 can occur only by grazing movement of body after having hit by vehicle.
>
> 17. The fact that RW1 entered the cause of alleged injury as fall at home is not conclusive evidence to accept the same. Whereas the occurrence witnesses, PW1 categorically stated that the offending vehicle hit at petitioner.
>
> 18. Immediately on the same day, after

> readmission, petitioner stated the alleged cause as road traffic accident. She was thereafter admitted and treated by Dr.Gopalan. So, the entry made by casualty doctor, RW1 in Ext.X2 cannot outweigh the reliable evidence tendered by the testimony of PW1 as well as from other police records.
>
> Therefore, it is found that petitioner sustained injuries due to hit of tempo van driven by R1. The contention of 3rd respondent that petitioner sustained injury by fall at home cannot be accepted."

It cannot be stated that the above findings are perverse. The above findings are based on evidence and we are of the view that no interference is required especially considering the totality of evidence and the fact that total amount awarded by the tribunal including medical reimbursement was only Rs.18,615/-. Hence the appeal is dismissed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.427/2001

JUDGMENT

Dated:9th July, 2007